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Supreme Court of the United States

OCTOBER TERM 1969

No. 554

JOHN T. CHAMBERS,

Petitioner,

v.

W. M. BEAUCHAMP,
Administrator of the Estate of D. P. Peck, Deceased,
and Carl Andrew Chambers,

Respondents.

PETITION FOR REHEARING OF ORDER ON PETITION FOR WRIT OF CERTIORARI

WILLIAM C. ODENEAL, JR.,
511 Adolphus Tower,
Dallas, Texas 75202,
and
J. REDWINE PATTERSON,
Praetorian Building,
Dallas, Texas 75201.

Of Counsel:
ODENEAL & ODENEAL

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JOHN T. CHAMBERS, Petitioner herein, respectfully moves this Court for an Order (1) vacating its denial of the Petition for Writ of Certiorari entered on November 24, 1969, and (2) granting the Petition. As grounds for this Motion, Petitioner states the following:

Two other substantial grounds were available to Petitioner although not previously presented, to-wit:

I. Since the New Mexico--Clerk--Administrator relied upon Rule 335, Vernon's Annotated Texas Statutes as suspending the effect of the Order admitting Peck's Will to probate pending the appeal de novo in the Dallas District

Court, he should have been bound by the other provisions of the Texas Law on the subject, particularly Vernon's Annotated Statutes, Probate Code, Section 49, which provides that only the owners of the estate, or a part thereof, may institute and maintain an action to declare heirship.

II. The sending of Petitioner's telegram to the New Mexico District Judge, together with the subsequent Affidavit of Disqualification, timely and properly raised Petitioner's asserted right to a federally guaranteed fair trial.

BEAUCHAMP HAD NO CAPACITY TO SUE TO DETERMINE HEIRSHIP, MUCH LESS CONTEST PECK'S WILL.

Vernon's Annotated Texas Statutes, Probate Code, Section 49, reads in part as follows:

> "Section 49. WHO MAY INSTITUTE ACTION TO DECLARE HEIRSHIP.
>
> Such action may be instituted and maintained in any of the instances enumerated above by any person or persons claiming to be the owner of the whole or a part of the estate of such decedent . . . "

Beauchamp relied upon Texas Rule 335 to enable him to attack Peck's Will in the New Mexico proceeding. But he brought the proceeding initially as a suit to determine

heirship. Clearly, under Texas law, he had absolutely no capacity to bring the suit in the first instance. Petitioner has heretofore raised the question of Beauchamp's lack of capacity to contest the Peck Will. But the question presented here is different. If Beauchamp did not own or claim any portion of the Peck Estate (and he did not), then he had no capacity to even file the suit to determine heirship.

An Administrator, as such, simply is not a person interested in the estate contemplated by Texas law. Ari vs. Sanez, (Tex. Civ. App., 1932) 52 SW 2d 383.

Capacity or standing to sue is a vital ingredient. Witness the action of the Tenth Circuit Court of Appeals on August 11, 1969 in affirming the District Court's dismissal of the Plaintiff's suit in Velvel vs. Nixon, where Professor Lawrence R. Velvel of the University of Kansas Law School sued President Nixon and others for a declaratory judgment that the Vietnam military conflict is unconstitutional, absent a Congressional declaration of war. He simply had no standing to sue. Neither did Beauchamp.

PETITIONER'S TELEGRAM AND AFFIDAVIT AS TO DISQUALIFICATION ADEQUATELY AND IMMEDIATELY RAISED THE CONSTITUTIONAL QUESTIONS INVOLVED.

Petitioner has failed to present this point previously. It relates to substance rather than form. It relates to simple fairness. It relates to Petitioner's right to a federally

guaranteed fair trial. Petitioner's telegram to the New Mexico District Judge (Appendix "K," Page K-1, Petition for Writ of Certiorari) uses plain, simple and intelligible language to tell the Judge that by reason of his long association with his own Clerk and that by reason of the fact that said Clerk had committed illegal acts to the estate in question made it "impossible for you to be fair and impartial."

Petitioner submits that he falls squarely within the guidelines set forth by Mr. Justice Black in Holt vs. Commonwealth of Virginia, 85 S. Ct. 1375 (1965), 381 U.S. 131.

Petitioner submits that these foregoing substantial grounds further indicate the infringement of his constitutional rights by the State of New Mexico and its agents, specifically Judge Nash and Beauchamp.

CONCLUSION

For the reasons set forth in this Petition for Rehearing, as well as in the Petition for Certiorari previously filed, rehearing and certiorari should now be granted.

Respectfully submitted,

WILLIAM C. ODENEAL, JR.
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Dallas, Texas 75202

and

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Dallas, Texas 75201

BY_____
J. Redwine Patterson

OF COUNSEL:

ODENEAL & ODENEAL

CERTIFICATE UNDER SUPREME COURT RULE 58

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to the grounds specified in Paragraph 2 of Rule 58.

_____
J. Redwine Patterson

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the above and foregoing Petition for Rehearing of Order on Petition for Writ of Certiorari have this day been served upon counsel for Respondents by depositing same in the United States mail, with sufficient postage affixed, addressed as follows:

Mr. Merrill L. Norton
Attorney at Law
Lovington, New Mexico

Messrs. Heidel, Swarthout and Samberson
Attorneys at Law
Lovington, New Mexico

Dallas, Texas this_____day of December, 1969.

_____
J. Redwine Patterson